

EXHIBIT D

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC.;
OTTOMOTTO LLC; OTTO TRUCKING
LLC,

Defendants.

CASE NO. 3:17-cv-00939-WHA

**PLAINTIFF WAYMO LLC'S
OBJECTIONS TO, AND COMMENTS
ON, DEFENDANTS' PROPOSED
PROTOCOLS PURSUANT TO
PARAGRAPH 7, PAGE 26 OF THE
COURT'S ORDER GRANTING IN PART
AND DENYING IN PART PLAINTIFF'S
MOTION FOR PROVISIONAL RELIEF
(DKT. 427)**

1 Plaintiff Waymo LLC (“Waymo”) hereby provides its objections to, and comments on,
 2 Defendants’ proposed Protocol for monitoring and verifying Defendants’ compliance with the
 3 requirements of the provisional relief granted by the Court’s May 11, 2017 Order in *Waymo LLC v.*
 4 *Uber Technologies, Inc., Ottomotto LLC, and Otto Trucking LLC*, Case No. 3:17-cv-00939-WHA
 5 (N.D. Cal.) (“Uber’s Proposed Protocol”).

6 **I. Introduction**

7 First and foremost, Waymo objects to Uber’s Proposed Protocol because it is not a “protocol”
 8 at all. The Court’s Order grants Waymo certain provisional relief (Dkt. 427 at pages 22-26,
 9 paragraphs 1-6) and then provides:

10 Defendants shall keep complete and accurate records of their compliance with all of
 11 the foregoing requirements, including directives given to Anthony Levandowski and
 12 others. The special master shall monitor and verify said compliance. To that end, the
 13 special master shall promptly develop proposed monitoring and verification
 14 protocols with the parties’ input and then submit the proposed protocols to the Court
 15 for approval. The protocols shall provide for the special master to visit defendants’
 16 facilities and monitor communications as necessary to ensure that Anthony
 17 Levandowski remains sealed off from LiDAR activities.

18 (*Id.* at 26, paragraph 7). Pursuant to the Court’s Order, the Special Master instructed the parties on
 19 May 13 that “each party shall submit to me in writing **via PDF that party’s complete and detailed**
 20 **protocol** as quoted below from paragraph 7, page 26 of the May 11, 2017 Order ruling on Plaintiff’s
 21 motion for provisional relief. ... the parties shall participate in a conference call with the special
 22 master [] to **discuss and resolve the final protocol** for monitoring and verification by the special
 23 master of the requirements in the Court’s Order. **I anticipate that the final protocol with input**
 24 **from each party shall be submitted to Judge Alsup for his review and alteration or approval on**
 25 **May 15.**” (5/13/2017 email from Special Master John Cooper (emphases added).)

26 Waymo carefully reviewed both the Court’s Order and the Special Master’s instructions, and
 27 provided, as requested, “via PDF” its “complete and detailed protocol,” which “provide for the special
 28 master to visit defendants’ facilities and monitor communications as necessary to ensure that Anthony

1 Levandowski remains sealed off from LiDAR activities.” Waymo’s proposed Protocol (“Waymo’s
2 Proposed Protocol”) was over 11 pages, with an additional 13 pages of exhibits.

3 In contrast, Defendants provided a four sentence email that reads, in its entirety:

4 Quinn team,
5 Uber’s proposed protocol is as follows:

6 Uber employees will be provided with the email address and telephone number of the
7 special master. If the special master receives a complaint of a potential violation of
8 the Court’s order, he will be allowed to speak to that employee and, if he deems it
9 necessary, to also speak with anyone else who may have witnessed the alleged
10 violation. If the special master believes the complaint may have merit, he will inform
11 the parties and allow the parties an opportunity to respond to the allegation. Once he
12 receives the parties’ responses, he will determine whether the complaint should be
13 reported to Judge Alsup.

14 (5/15/2017 Wendy Ray email.)

15 During the 4 PM meet and confer with the Special Master, counsel for Defendants admitted
16 that this email did not cover (among many other things required) any protocol for the special master to
17 visit defendants’ facilities and monitor communications as necessary to ensure that Anthony
18 Levandowski remains sealed off from LiDAR activities. Indeed, counsel for Defendants suggested
19 they had not read the Court’s Order closely enough to even notice that requirement for the Protocol.

20 In large part because Defendants failed to provide any Protocol in advance of the meet and
21 confer, the final protocol with input from each party was not submitted to Judge Alsup for his review
22 and alteration or approval on May 15. On the contrary, because Defendants had not yet provided any
23 Protocol at all, Defendants have succeeded in causing further delay. Now, the earliest date that the
24 final protocol can be submitted to Judge Alsup is the evening of May 17. It is therefore likely that,
25 despite the Court’s order requiring Defendants to “immediately” take certain steps to prohibit Mr.
26 Levandowski or other of Defendants’ officers and employees from using or disclosing Waymo’s trade
27 secrets, and the fact that Waymo has now posted the required bond (Dkt. 448), there will be no ability
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1 for either the Special Master or anyone else to monitor or verify whether Defendants are actually
2 complying with any of the Court's provisional relief until May 18.

3 Defendants' willful failure to comply with the Court's and the Special Master's instructions
4 regarding proposed protocols is very troubling. It demonstrates, as well as any briefing Waymo could
5 draft, why it is so critical that the Special Master and the Court implement detailed and rigorous
6 protocols for monitoring and verifying Defendants' ongoing compliance with the Court's Order. It is
7 also part and parcel with Defendants' conduct to date in this litigation. Defendants have repeatedly
8 flouted Court Orders, leaving Waymo to discover – only after a Court-imposed deadline has already
9 passed – that Defendants had set themselves up for failure, intentionally pursuing a path of supposed
10 compliance that could not possibly achieve what was ordered. This has in turn denied Waymo (and
11 the Court) the opportunity to consider the withheld evidence until after relevant briefing or hearing
12 have already passed.
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15 For example, Defendants were ordered on March 16 to produce “all files and documents
16 downloaded by Anthony Levandowski, Sameer Kshirsagar, or Radu Raduta before leaving plaintiff's
17 payroll and thereafter taken by them ... as well as all subsequent emails, memoranda, PowerPoints,
18 text messages, or notes that have forwarded, used, or referred to any part of said downloaded
19 material,” and “[i]f any part of said downloaded material has been deleted, destroyed, or modified,
20 then defendants shall state the extent thereof and produce all documents bearing on said deletion,
21 destruction, or modification.” (Dkt. 61 at 2.) However, instead of looking where Defendants knew
22 the downloaded materials were – on Mr. Levandowski's personal laptop and with Stroz Friedberg
23 (which received raw electronic files from Mr. Levandowski and other Ottomotto employees that have
24 never been either produced or logged) – Defendants looked at a handful of servers and computers they
25 knew didn't have the downloaded materials. Moreover, Defendants never bothered to inspect the
26 stolen 14,000 files, which was obviously necessary to know what to look for, and instead searched
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1 exclusively with hash values and file names. And to date, Defendants have still never explained
 2 whether any of the downloaded files have been destroyed or modified. Waymo only learned of
 3 Defendants' head in the sand, "Ostrich" approach to purported compliance with the Court's Order
 4 **after** the March 29 deadline had passed. Permitting Defendants to play the same games in response to
 5 the Court's May 11 Order would be unacceptable. Defendants have proven again and again that they
 6 cannot be trusted to comply with the Court's granted provisional relief without close and ongoing
 7 supervision by the Special Master that begins **in advance of** each Court-set deadline for compliance.
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9 Because to date Defendants have provided no protocol at all, it is difficult for Waymo to
 10 comprehensively brief these issues. Below, Waymo does its best to anticipate what Defendants might
 11 object to in a complete and detailed protocol. To the extent Waymo does not address any specific
 12 objection or comment raised in Defendants' objections, Waymo incorporates by reference its
 13 Proposed Protocol and Exhibits thereto.
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15 II. **Defendants' Proposed Protocol Is Grossly Inadequate**

16 A. **Defendants Provide No Protocol to Ensure Compliance, Monitoring, and** 17 **Verification of Paragraph 2 Requirements**

18 Paragraph 2 requires that "Defendants **must immediately and in writing exercise the full**
 19 **extent** of their corporate, employment, contractual, and other authority to (a) prevent **Anthony**
 20 **Levandowski and all other officers, directors, employees, and agents** of defendants from
 21 consulting, copying, or otherwise using the downloaded materials; and (b) **cause them to return the**
 22 **downloaded materials** and all copies, excerpts, and summaries thereof to Waymo (or the Court) **by**
 23 **MAY 31 AT NOON**. Copies essential for counsel of record and their litigation experts to use in
 24 defending this civil action are exempted from the foregoing requirement." (Dkt. 427 at 26 (emphases
 25 added).)
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27 Waymo's Proposed Protocol effects the Court's requirements. Uber's Proposed Protocol does
 28 not.

1 1. Waymo's Proposed Protocol Section I.A

2 In order to comply with Paragraph 2, Defendants must immediately and in writing send a letter
3 to all officers, directors, employees, and agents. That's what Waymo proposes, including with Exhibit
4 1 and the enclosure of the Court's redacted Order. Defendants' suggest that they can send the letter at
5 any time before May 31, and that it can send it to only a subset of its officers, directors, employees
6 and agents (i.e., those it deems work in LiDAR). That is inadequate.

7 Paragraph 2 also requires that Defendants exercise the full extent of their corporate,
8 employment, contractual, and other authority. That's what Waymo proposes, including with penalties,
9 up to and including termination, and with Exhibit 1, which requires all recipients to certify compliance
10 with the requirements of Paragraph 2. Requiring recipients to certify compliance is within
11 Defendants' corporate, employment, contractual, and other authority, and necessary for Defendants to
12 exercise that full authority. Defendants suggest that they need not require any certifications. That is
13 well below the "full extent" of their authority. Defendants also suggest they need not disclose to
14 anyone – even the Special Master – what penalties they may (or may not) use to enforce Paragraph 2.
15 But there can be no compliance with Paragraph 2 without penalties for those who will not cooperate –
16 up to and including termination (explained further below on page 9).

17 2. Waymo's Proposed Protocol Section I.B

18 To verify Defendants' compliance with Paragraph 2, the Special Master must know –
19 immediately – who receives the written letter and what it says. The Special Master must also have
20 access (consistent with Paragraph 7 and as Waymo's protocol provides) to communicate with anyone
21 who receives the letter to confirm that it was actually received by that person. Defendants will likely
22 be using list serves and aliases, and the Special Master will not, in any event, know every necessary
23 recipient's email address. Defendants suggest that they can provide the Special Master, at an
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1 unspecified time after the fact, with whatever letter it sends. Uber provides for no verification
2 mechanism that the letter actually gets to the people it needs to go to. That is inadequate.

3 Waymo proposes that the Special Master specifically communicate with 35 recipients of the
4 letter, some selected by him and some by Waymo. This is appropriate both as a spot check and
5 because some recipients are more important than others. Uber has not identified any argument against
6 this protocol, other than that it would be burdensome and that it apparently would rather have full
7 control over whom the Special Master talks to (and whom he does not). But any burden on
8 Defendants is irrelevant, because it has been ordered to comply with the Court's Order to the "full
9 extent" of their authority. And verification requires that someone other than Defendants select whom
10 the Special Master talks to.
11

12 Certifications in response to the directives of Exhibit 1 are necessary for Defendants to comply
13 with the requirement that they exercise the full extent of their corporate, employment, contractual, and
14 other authority, and the Special Master must have access to all returned certifications. If a recipient of
15 Exhibit 1 fails to respond with the completed certification, the Special Master needs to know that so
16 that he can monitor and verify penalties. And if a recipient responds and indicates he or she has
17 information relevant to Paragraph 2, then the Special Master needs to know that Defendants are
18 immediately following up to ensure that the downloaded materials will not be consulted, copied or
19 otherwise used and that Defendants will cause the downloaded materials to be returned to Waymo (or
20 the Court) by the May 31 deadline.
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22 Finally, the Protocol should provide that the Special Master verify to the Court compliance to
23 date in advance of the May 31 deadline. There is no monitoring, and effectively no verification of
24 compliance, if Waymo and the Court find out on May 31 that Defendants have – yet again –
25 eviscerated a Court order by avoiding taking the very actions that would be necessary to comply.
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B. Defendants Provide No Protocol to Ensure Compliance, Monitoring, and Verification of Paragraph 3 Requirements

Paragraph 3 requires that “With respect to Anthony Levandowski, defendants shall **immediately** (a) remove him from any role or responsibility pertaining to LiDAR; (b) **take all steps in their power to prevent him from having any communication on the subject of LiDAR with any officer, director, employee, agent, supplier, consultant, or customer** of defendants; and (c) **prohibit him from consulting, copying, or otherwise using the downloaded materials in any way. Defendants shall instruct all their officers, directors, employees, agents, suppliers, consultants, and customers in writing of this prohibition, and further instruct them in writing to immediately report any suspected breaches thereof to the special master (or to the Court).**” (Dkt. 427 at pages 23-24 (emphases added).)

Waymo’s Proposed Protocol effects the Court’s requirements. Uber’s Proposed Protocol does not.

1. Waymo’s Proposed Protocol Section II.A

In order to comply with Paragraph 3, Defendants must immediately and in writing instruct to Mr. Levandowski and all officers, directors, employees, agents, suppliers, consultants, and customers of Defendants of certain prohibitions, and to report any suspected breaches thereof. That’s what Waymo proposes, including with Exhibits 1, 2, 3, and 4, and the enclosure of the Court’s redacted Order.¹ Defendants suggest that they can send one or more letters at any time before May 31 and that they can send them to only a subset of its officers, directors, employees, agents, suppliers, consultants, and customers (i.e., those it deems work in LiDAR). That is inadequate.

¹ As discussed on the May 15 meet and confer, Waymo is willing to meet and confer about any specific objections Defendants have to the Court’s Order, such as the requirement that written instructions go to all of Defendants’ customers and suppliers. Waymo understands Defendants’ objections to the Court’s Order will be forthcoming today so that any request for modification or clarification can be immediately resolved.

1 Paragraph 3 also requires that Defendants take “all steps in their power” to prevent Mr.
2 Levandowski from having communications about LiDAR with any of Defendants’ officers, directors,
3 employees, agents, suppliers, consultants, and customers. That’s what Waymo proposes, including
4 with penalties, up to and including termination, and with Exhibit 2, which requires Mr. Levandowski
5 to certify compliance with the requirements of Paragraph 3 (and Paragraph 2). Defendants suggests
6 that they need not require Mr. Levandowski to return any certification, much less that they need to fire
7 him if he fails to comply with the prohibitions of Paragraph 3 (or Paragraph 2). But the Court did not
8 order that Defendants take “some steps” or even “reasonable steps.” The Court ordered Defendants
9 take “all steps in their power.” What Defendants propose to do (if anything) is well below taking all
10 steps in their power.
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12 It is very clear from the Court’s Order that Mr. Levandowski must be fired if he refuses to
13 comply with Defendants’ directives. Defendants have no excuse to “pull any punches,” to use the
14 Court’s language. Indeed, Uber fires employees for far less than obstructing Court Orders. For
15 example, just last December Uber fired two in-house attorneys – not for refusing to turn over 14,000
16 stolen files – but “after they turned to outside attorneys for advice on proposed changes to the
17 company’s document- and data-retention policy, allegedly without the necessary authorization from
18 the company.”² And Uber reportedly will “disable” (i.e., terminate) drivers of its ride-sharing service
19 for offenses far less serious than criminal trade secret misappropriation, including if a) their average
20 star rating drops below 4.6, b) they violate Uber’s Code of Conduct, c) they engage unsafe driving, or
21 d) they drive with a companion in their car.³ There can be no dispute that Uber has the authority to
22 terminate Mr. Levandowski for refusing to return the downloaded files.
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26 ² See <http://www.corpcounsel.com/top-stories/id=1202786179042/Uberr-Firing-of-2-InHouse-Lawyers-Raises-Questions-About-Legal-Culture?mcode=1202614998472&curindex=0>.

27 ³ See <http://www.ridesharingdriver.com/fired-uber-drivers-get-deactivated-and-reactivated/>.

1 Paragraph 3 also requires that Mr. Levandowski immediately make his personal devices
2 available for inspection. Otherwise there is no way to enforce (or verify) that he can no longer
3 consult, copy, or otherwise use the downloaded materials. That's what Waymo proposes, as well as
4 monitoring and verification by the Special Master and a forensic auditing expert of his choosing.
5 Defendants suggest that they could somehow comply with Paragraph 3 (or Paragraph 2) without
6 inspecting Mr. Levandowski's electronic media. They could not.

8 Waymo's proposal also properly requires that Mr. Levandowski be prohibited from using any
9 devices to access Defendants' servers or networks that are not issued by Defendants – i.e., no access
10 from personal devices, that Mr. Levandowski be prohibited from bringing personal devices into
11 offices or facility with LiDAR personnel or work, and that Mr. Levandowski be prohibited from
12 entering any area of any of Defendants' offices or facilities where LiDAR work is conducted or
13 LiDAR personnel are stationed. Defendants suggest that they could comply with Paragraph 3 without
14 such prohibitions. They could not.

16 2. Waymo's Proposed Protocol Section II.B

17 To verify Defendants' compliance with Paragraph 3 (or Paragraph 2), the Special Master must
18 know – immediately – who receives the written letters and what they say, and must also be able to
19 conduct spot check interviews of recipients. (*See* pages 6-7, *supra*.) This is even more crucial with
20 respect to Mr. Levandowski. The Special Master must have access to communicate with this key
21 individual, whom Paragraph 3's requirements (among others) are centrally focused on. Simply put,
22 the Special Master cannot verify Defendants' compliance with Paragraph 3 without interviewing Mr.
23 Levandowski. It is telling that Defendants have proposed a protocol that does not provide for such an
24 interview.

26 The Special Master also cannot verify compliance with Paragraph 3 without access to the
27 responsive certifications. (*See* page 7, *supra*.)

1 Verification of compliance with Paragraph 3 also requires that the Special Master have access
 2 to communicate the relevant IT and security personnel who will be enforcing the prohibitions on Mr.
 3 Levandowski's access to LiDAR. That's what Waymo proposes. Defendants suggest that even if
 4 such technical and security measures were implemented, the Special Master could verify compliance
 5 without any communications or on-site visits. That is inadequate.

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 7 Finally, the Protocol should provide that the Special Master verify to the Court compliance to
 8 date in advance of the May 31 deadline, for the same reasons as above. (*See page 7, supra.*)

9 3. Waymo's Proposed Protocol Section II.C

10 In order to monitor Defendants' ongoing compliance with the requirements of Paragraph 3, the
 11 Special Master must have access to LiDAR personnel's communications. Specifically, the Special
 12 Master must be able to inspect, on demand, the emails, phones, and electronic chat accounts of
 13 any LiDAR personnel, and verify whether any incoming communications have come from Mr.
 14 Levandowski. The Special Master must also be notified of any meetings of the LiDAR team or sub-
 15 teams, and be given the opportunity to monitor such meetings either in person or remotely. That's
 16 what Waymo proposes, and it is consistent with Paragraph 7 ("The protocols shall provide for the
 17 special master to visit defendants' facilities and monitor communications as necessary to ensure that
 18 Anthony Levandowski remains sealed off from LiDAR activities."). It is not clear what Defendants
 19 suggest as an alternative.

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 21 Finally, the Protocol should provide that the Special Master periodically verify to the Court
 22 ongoing compliance, for the same reasons as above. (*See page 7, supra.*)

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 24 C. Defendants Provide No Protocol to Ensure Compliance, Monitoring, and
 25 Verification of Paragraph 4 Requirements

26 Paragraph 4 requires that, "With respect to all other persons, including those with Stroz
 27 Friedberg, **defendants shall conduct a thorough investigation and provide a detailed accounting**
 28 **under oath setting forth every person who has seen or heard any part of any downloaded**

1 **materials, what they saw or heard, when they saw or heard it, and for what purpose.** In their
 2 investigation, defendants must do more than query servers with term searches. For example, they must
 3 interview personnel with particular focus on anyone who has communicated with Anthony
 4 Levandowski on the subject of LiDAR. Defendants' accounting shall not be limited to Uber but shall
 5 include all persons who fit the foregoing description, including Levandowski and his separate counsel.
 6 The accounting may exclude, for only the time period after the commencement of this civil action, the
 7 attorneys of record and their staff and experts employed for this litigation. The accounting shall not be
 8 limited to downloaded materials that happened to make their way into some due diligence report but
 9 shall cover any and all downloaded materials. **The accounting shall also identify the complete**
 10 **chains of custodians for every copy of any downloaded materials or due diligence report**
 11 **referencing downloaded materials. Defendants must also use the full extent of their authority**
 12 **and influence to obtain cooperation with the foregoing procedure from all involved.** For
 13 example, if a potential custodian refuses to cooperate, then defendants' accounting shall set forth the
 14 particulars, including all efforts made to obtain cooperation. The accounting must be filed and served
 15 by JUNE 23 AT NOON. The accounting may be filed under seal *only* to the extent that it quotes or
 16 appends downloaded materials." (Dkt. 427 at 24-25) (emphases added).)

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 19 Waymo's Proposed Protocol effects the Court's requirements. Uber's Proposed Protocol does
 20 not.

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 22 1. Waymo's Proposed Protocol III.A

23 Paragraph 4 requires a thorough investigation resulting in a detailed accounting. Defendants
 24 obviously cannot wait until June 22 to begin the investigation; they must begin immediately. Waymo
 25 is gravely concerned that absent early monitoring and verification, Defendants will take their
 26 customary "ostrich" head in the sand approach and fail to conduct an adequate investigation or prepare
 27 an adequate accounting. If Waymo, the Special Master, and the Court do not learn until June 23 that
 28 Defendants have been spinning their wheels for six weeks, and seek to give themselves another

1 unauthorized extension (as they did with the Order to provide an unredacted privilege log to Waymo
 2 by April 27 at noon – something they already had but simply withheld for over 24 hours after the
 3 Court-imposed deadline, without explanation), there will not be enough time until the close of fact
 4 discovery (currently set for July 21) for Defendants to actually set about complying with Paragraph 4.
 5 Waymo’s proposal seeks to avoid this otherwise likely scenario, by providing for early monitoring and
 6 verification. Defendants provide for no monitoring or verification until June 23 – which is too late.

7 Defendants do not dispute that in order to meaningfully comply with Paragraph 4, they must
 8 devise a plan for compliance by May 22. Rather, Defendants balk on having to share that plan with
 9 the Special Master or Waymo. But Waymo is not seeking any attorney work product or privileged
 10 information. Defendants must simply explain how they intend to comply with the Court’s Order – for
 11 example, which employees and entities they will seek to interview and in what time frame(s), and
 12 what they will do to exercise the full extent of their authority and influence to obtain cooperation.
 13 This transparency is warranted here based on Defendants’ prior conduct. If Defendants’ plan is
 14 reasonable, there will be no further issues. If, however – as Waymo suspects – there is no plan, or it is
 15 plainly deficient, then Waymo and the Special Master should given the opportunity to suggest
 16 modifications, and brief any disputes to Magistrate Judge Corley by May 27. That will give the
 17 Magistrate Judge an opportunity to rule sufficiently in advance of the June 23 deadline for Defendants
 18 to provide a compliant accounting by the Court-imposed deadline.

19 D. Defendants Provide No Protocol to Ensure Compliance, Monitoring, and
 20 Verification of Paragraph 5 Requirements

21 Paragraph 5 requires that, “Also by JUNE 23 AT NOON, defendants shall provide
 22 Waymo’s counsel and the Court **with a complete and chronologically organized log of all oral**
 23 **and written communications** — including, without limitation, **conferences, meetings, phone**
 24 **calls, one-on-one conversations, texts, emails, letters, memos, and voicemails** — wherein
 25 **Anthony Levandowski mentioned LiDAR to any officer, director, employee, agent, supplier,**
 26 **or consultant of defendants.** The log shall identify for **each such communication the time,**
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1 **place (if applicable), mode, all persons involved, and subjects discussed, as well as any and**
 2 **all notes or records referencing the communication.”** (Dkt. 427 at 25 (emphases added).)

3 Waymo’s Proposed Protocol effects the Court’s requirements. Uber’s Proposed Protocol
 4 does not.

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 6 1. Waymo’s Proposed Protocol IV.A

7 Paragraph 5 requires a complete and chronologically organized log of all oral and written
 8 communications between Mr. Levandowski and anyone from Defendants. As with Paragraph 4,
 9 Defendants obviously cannot wait until June 22 to begin this substantial undertaking that Waymo
 10 expects will comprise many thousands of entries. And although the Order is clear what level of detail
 11 the log must provide and by what date, the Court’s standing order on privilege logs is equally clear –
 12 yet Defendants have repeatedly failed to provide the required level of detail by the required date. For
 13 the same reasons as for Paragraph 4, therefore, monitoring and verification of compliance requires that
 14 Defendants disclose their plan well in advance. (*See* pages 12-13, *supra*.)

15 E. Defendants Provide No Protocol to Ensure Compliance, Monitoring, and
 16 Verification of Paragraph 6 Requirements

17 Paragraph 6 requires that, “Subject to the protective order, and upon reasonable notice,
 18 Waymo’s counsel and one expert may inspect **any and all aspects** of defendants’ **ongoing work**
 19 **involving LiDAR** — including, without limitation, **schematics, work orders, source code, notes,**
 20 **and emails** — whether or not said work resulted in any prototype or device.” (Dkt. 427 at 25)
 21 (emphases added).)

22 Waymo’s Proposed Protocol effects the Court’s requirements. Uber’s Proposed Protocol
 23 does not.

24 1. Waymo’s Proposed Protocol V.A

25 Waymo proposes a protocol for these Court-ordered inspections. Defendant does not. The
 26 Special Master must have access to these inspections, and should be required to submit period
 27 certifications of Defendants’ compliance with the inspection protocol, to avoid what Waymo fears
 28

1 would otherwise be serial disputes over whether Waymo is entitled to inspect certain of Defendants’
 2 on-going LiDAR work.

3 F. Defendants Provide No Protocol to Ensure Compliance, Monitoring, and
 4 Verification of Paragraph 7 Requirements

5 Paragraph 7 requires that, “Defendants shall keep **complete and accurate records** of their
 6 **compliance with all of the foregoing requirements, including directives given to Anthony**
 7 **Levandowski and others.**” (Dkt. 427 at 26) (emphases added).)

8 Waymo’s Proposed Protocol effects the Court’s requirements. Uber’s Proposed Protocol
 9 does not.

10 1. Waymo’s Proposed Protocol VI.A

11 Paragraph 7 requires that Defendants maintain complete and accurate records of their
 12 compliance with the requirements of all of the preceding paragraphs. That requires that Defendants
 13 immediately issue appropriate litigation holds. The Special Master must be cc-ed on these litigation
 14 holds, and have the ability to interview recipients, in order to verify compliance. (*See* pages 6-7,
 15 *supra*.) The Special Master must also have access to any personnel involved in Defendants’
 16 compliance efforts to confirm that records – such as of directives given to Mr. Levandowski – are
 17 being generated and maintained. Waymo’s proposal provides for this. Defendants suggest that no
 18 monitoring or verification protocol is required. That is inadequate.

19 Finally, because the requirements of Paragraph 7 are ongoing, the Special Master should
 20 submit ongoing, periodic certifications of compliance to the Court. (*See* page 7, *supra*.)